

**BETHLEHEM PLANNING BOARD
MEETING MINUTES
OCTOBER 8, 2014
BETHLEHEM TOWN HALL MEETING ROOM**

Present: Chris McGrath, Mike Bruno, Dave Wiley, Andrea Bryant, Sandy Laleme, Don Lavoie, Alecia Loveless and Jeanne Robillard

Excused: Peter Roy

Absent: Libby Staples

Dave calls the meeting to order at 6:00 and appoints Don Lavoie as a full board member for Peter Roy.

The board reviews the minutes from 9/24/2014.

Motion by Mike Bruno, seconded by Dave Wiley, to approve the minutes of the September 24, 2014 meeting. Alecia and Don abstain due to absence. All other members in favor, motion carries.

Dave reviews the next order of business, which in the NCES Conceptual. In a bookkeeping matter Dave asks that if any member of the board feels they have already taken a position, or spoken against the applicant, now would be the appropriate time to disqualify themselves from participation in tonight's meeting. He gives the members a few minutes to reflect. Andrea raises the question about members who have spoken in favor of NCES. Dave comments that regardless, if someone feels they are bias they should disqualify.

Dave would like to read the email from Town attorney Brenda Keith regarding bias. He asks for a motion to release the contents of the email.

Motion by Chris McGrath to release the contents of Attorney Keith's email to the public, seconded by Andrea Bryant. The majority of the board in favor, with Sandy Laleme voting against. Motion carries.

Dave reads the following from the email:

1. Don't let anyone commit to NCES an interpretation of the stipulations unless it is crystal clear. If there are any questions of interpretation remind the applicant that the Board will be sending the application and the question to Town's legal counsel for review.
2. Ask whether any regular member would like to recuse themselves before you start.
3. If you decide to allow public questions or comment, (and you decide-Not NCES legal counsel!) make sure you set out the parameters: you do not want to hear why landfills should not be allowed to expand. It is an allowable use under the Town's zoning so the Board will not entertain discussing that.

4. If NCES suggests a member, who has not voluntarily stepped down, is biased you may ask the member whether they wish to recuse themselves now or whether they wish for the chair to seek the advice of Town's counsel regarding the matter.

The board does a brief review of the Board's Rules of Procedure.

6:15 Dave opens the public meeting for the NCES conceptual, pre-submission discussion for Stage V Landfill Expansion and reminds everyone that this is a conceptual, pre-submission discussion in anticipation of the submission of an application for site plan approval. He informs the public they will be allowed to give input, but they are asked to limit their comments to less than one minute, and to please make sure they pertain to the plan being submitted at this time. He also reminds people that this is a permitted use under the Town of Bethlehem Zoning Ordinances, and comments regarding whether or not to allow the expansion are not relevant or productive.

Dave invites the representatives for NCES to the table and again asks if any members of the board wish to recuse themselves from this matter. With no response from the Board Attorney Phil Hastings, representing NCES, from Cleveland, Waters, and Bass Attorneys at Law asks if it would be appropriate to request recusal. He believes it would be appropriate for Andrea, Alecia, and Jeanne to recuse themselves and indicated that Andrea had stated in a previous communication that she would do so. It is decided, because this is a conceptual, all members may remain. Mr. Hastings questions the allowance of public input. Dave informs him the precedent is to allow for the public to comment during conceptual reviews.

Mr. Hastings presents the plans for the Stage V expansion and informs the board they have initial state approval for Stage V from NHDES and no appeals were filed prior to the deadline for appeals. He goes on to state the next step is to schedule a public hearing for Site Plan Review, pursuant of the settle agreement and stipulation which was entered into between NCES and the town. He explains that settlement was very specific about what components need to go into a site plan review application and which sections of the towns regulations will apply to the application. The purpose of tonight's meeting is to get feedback from the planning board.

Adam Sondal presents the plan to the board. He explains Stage V is an 8 acre expansion that will tie in to the existing phases. There is a brief exchange between Don and Phil Hastings regarding the agreement and the stipulation. Mr. Hastings offers to present a summary outlining what sections apply for the stipulation. The board feels this would be helpful in being thorough.

Dave gives the board opportunity to respond to the plan in front of them. Jeanne questions the height of the expansion. Mr. Sondal offers that it will be 10' higher than the existing landfill. Mr. Hasting states the actual Site Plan Review will have all the final numbers.

Don wonders if the Select Board has conducted any sort of audit to see if everything in the conditions of the agreement has been met. Sandy is not sure the Select Board has completed all components, but

feels it is something they could do if the Planning Board felt it necessary. Don feels that verifying compliance with the settlement agreement should fall on the Select Board. Sandy agrees, and doesn't see it as a huge issue for the Select Board to complete.

Public input:

Peter Manard, who would like to know when there will be a design to review. Mike Bruno feels this would come from NHDES.

Joyce Manard questions the height of the expansion. Mr. Hastings state they will defer from answering any technical questions at this time.

Rita Farrell would like to have the Planning Board attorney, and not the Town attorney, look into whether the stipulation, which came after the settlement, has the legal right to stipulate that the Planning Board cannot consider certain items, even though the board is empowered by the state to do so. Dave indicates that all of that will be reviewed. She questions whether or not it is a valid stipulation

Dave feels this is not the proper forum to discuss the settlement and the stipulations. This is a conceptual, and most of the items being raised tonight will become a mute point at the Public Hearing.

A conversation takes place between the Planning Board members regarding the original agreement, the supplemental stipulation. Phil Hastings offers that the original agreement dealt with the substantive issues of what the Planning Board has jurisdiction over relative to what the state has jurisdiction over. The supplemental stipulation addresses merely the procedural requirement that the Planning Board could legitimately ask NCES to provide; what goes into the application. What it doesn't address are substantive matters because they were addressed in the original agreement.

Dave asks the board if they would like to send this matter to Planning Board attorney Jae Whitelaw for review. Don feels members spent many hours with Town attorney Brenda Keith and doesn't think there could have been anyone more concerned about the town's welfare than Brenda. It was agreed at that time that the stipulation was in the town's best interest, and to spend more money with another attorney is not necessary. He questions where the process ends and at what expense.

Phil offers to provide the board with information that the board can present it to Brenda Keith. The board can get back to NCES if Brenda doesn't agree. Don would like Brenda to explain the appropriateness of the stipulation to the Planning Board in context of state law.

A time line is discussed for a public hearing. Phil Hastings requests a special meeting specifically for this purpose. It is determined that November 5th would be the best option for all parties.

Motion by Sandy Laleme to adjourn at 7:30, seconded by Mike Bruno. All in favor, motion carried.

Respectfully Submitted,

Dawn Ferringo

Planning and Zoning Clerk